

Volume 8

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Part 11

CAT Chairman

★ On 5.2.1997 Mr.K.M. Aggarwal took over as the new Chairman of the Central Administrative Tribunal. Mr. Aggarwal is the Former Chief Justice of the High Court of Sikkim. He had also functioned as the Judge of the Andhra Pradesh and Madhya Pradesh High Courts.

Governors Appointed

Justice Fatima Beevi, a Former Judge of the Supreme Court, has been appointed as the Governor of Tamil Nadu. Justice Sukhdevsingh Kanga has been appointed as the Governor of Kerala.

Suspended From Assn. Membership

A Special General Body Meeting of the Advocates Association, Bangalore, held on 4.2.1997 adopted a unanimous resolution suspending Sri.Krishnoji Rao from the Membership of the Association for a period of three years on the ground of his alleged misbehaviour.

Raichur Lawyer

Sentenced to Six Months

By the judgment dated 3.2.1997 a Division Bench of Karnataka High Court comprising Justice M.F.Saldanha and Justice H.N.Narayan has sentenced Mr.Chandrashekar, an Advocate from Raichur, to undergo six months simple imprisonment for Contempt of Court after holding him guilty of making false statement during a judicial proceeding and producing a fabricated document.

Point Blank

The CBI shall file an Affidavit detailing the manner in which the Court should monitor the on going investigation. He also want to know how the Court can guide, whether it has to be given orally or in writing and we are under a command.

— A Division Bench of Patna High Court monitoring Rs.950 Crore fodder scam.

Don't Be Crusaders - Justice Ahmadi

Justice A.M.Ahmadi, the Chief Justice of India, called upon the Judges to refrain from projecting the image of being the crusaders and champions of causes however noble or worthy they might be. Speaking after accepting the Honorary degree of "Doctor of Laws" conferred on him by the Cochin University of Science and Technology on February 1, 1997, he said that such commitment to causes necessarily implies a mind set which may jeopardise the image of impartiality of the judicial office. It may also give the impression that the Judge has made up his mind before hand and the party at the receiving end may feel that its point of view may be lost, he added.

Justice Ahmadi said that it was because of this tendency he felt greatly disturbed when some commentators while referring to certain actions and observations made in some cases observed that the presumption of innocence had been turned upside down. It was clearly a reflection of the impartiality of those judicial officers and should be avoided as it impinges on the credibility of the judiciary as an institution. He noted that the year 1996 has been variously described as "the year of Judge" "the year of the law" and by similar epithets in several news magazines which sought to review the judicial proceedings. He further said that the kudos by the media and a section of the people may sound to be flattering as Judges and Lawyers we can ill afford to get carried away by emotion. We must examine the events, objectively in the context of the laws and Constitutional philosophy. Perceptions of laypersons apart, we, as students of the law must calmly assess the impact of our actions in the spirit of researchers, he added.

Justice Ahmadi said the judiciary in recent times, has been forced to venture into areas that did not traditionally fall within its compass because the other wings were reluctant to perform their functions within a reasonable time. The inability of the other wings to take a decision on complex issues within a reasonable time has forced the affected parties to move for writs of Mandamus to command the authorities to decide that issue within a certain time frame. This

would not have been the position if decision had been taken without loss of time. But the role of the judiciary is essentially to see that the rule of law prevails and legislative and executive actions are consistent with the Constitution. To successfully achieve our Constitutional goal each wing of the State is required to function independently and also in concert with other wings. If all the three wings do not move in same direction it would be impossible to achieve our Constitutional goal for which we are all striving, Justice Ahmadi remarked.

His Lordship emphasised that Judges, despite their training and experience in handling public issues are not equipped to make policies which have wide scale social and economic ramifications. This is a specialised skill for which Legislative draftsmen rely upon the grass root experience of several seasoned administrators. Judges do not have the benefit of such experience and practical knowhow. Traditionally, when a matter comes before a Court, Judge is asked to decide whether a particular policy should be adopted or rejected. The judgment is to be based upon its compatibility with the country's Constitutional scheme. However when after the rejection of the policy he is either asked or at his own initiative to evolve a policy the resulting situation becomes one of controversy. In many such situations Judges were asked to intrude into areas which are rife with political controversy.

(Continued on page 3)

Around the Courts

□ The Mines Act, 1952 r/w Sec.2(ba) of Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962, as amended in 1977-Water is a mineral:

By a judgment dated 29.12.1996 a Bench of the Supreme Court comprising Justice Saghir Ahmed and Justice Kuldeep Singh, held that water is a "mineral" within the meaning of this term under relevant provision of the Mines Act, 1952 r/w Sec.2(ba) of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962, as amended in 1977. Dismissing an Appeal by an Industrial Co-Operative Society which objected to the use of proposed pipelines of the ONGC to be laid on a stretch of land belonging to the Society in Surat District to transport water to the gas processing plant Hazira to run it efficiently and effectively ruled that the ONGC has right of user in the piece of land in question to lay pipelines for transporting petroleum and minerals from one place to another by virtue of relevant notifications issued by the concerned authorities under the 1962 Act as amended in 1977.

□ Tamil Nadu GO dated February 12, 1988 benefit of order is available to the spouses:

By the judgment dated January 31, 1997 Justice P.Sadasivam of the Madras High Court has ruled that a woman from forward community who is married to a Scheduled Caste or backward caste person will also acquire her husband's caste status. Allowing a writ petition from Dr.V.Saradha, a brahmin by birth, who married a person from a dalit community, justice Sadasivam directed the Social Welfare Department to issue a SC certificate to her. The court also directed the government to consider her for a suitable job after granting concession and relaxation in respect of her age.

An assignee is clothed with the rights of his principal - Legal maxim

A Way Out

At present there is no satisfactory arrangement in City Civil Court for parking of two and four wheelers. The prevailing system of vehicular parking is hap hazard and chaotic. Immediate steps are required to remedy the situation with a view to remove the flaws. Since City Civil Court is in the prime location the importance of vehicular parking area is very much. Even though the parking area is intended to serve the Lawyers and Litigants there are complaints that persons having their establishments in K.G.Road and Avenue Road are regularly parking vehicles in this area possibly with the connivance of the licensed contractor. With the result the Lawyers hardly find place to park their vehicles. This abuse requires to be prevented.

A few years ago parking of vehicles in front of the City Civil Court was barred because of the then prevailing situation viz. important government buildings being the target of possible explosions by using the vehicles as the carrier for explosives. However, such situation is not prevailing in Bangalore and as such there is no rational for not permitting the vehicular parking in front of the City Civil Court. By removing this restriction more parking space could be provided resulting in removal of congestion. Presently it is extremely difficult to take out the parked cars, particularly during peak hours since the four wheelers are parked hap hazardly. It is also not possible to negotiate the four wheelers into and from the parking slots on account of non-observance of the required precautions by the vehicle owners/drivers. Licensed

contractor must be directed to regulate the parking arrangements leaving sufficient place for free movement of four wheelers.

A lot of time is consumed in entering City Civil Court or coming out from the Central College side. There is a traffic bottleneck because of heavy vehicular traffic and lesser width of the Road. To remove this problem one way traffic may be ordered by giving entry to City Civil Court from the Central College side and providing exit point in front of Assistant Commissioner's Office leading to District Office Road. This will facilitate easy movement of vehicular traffic.

In regulating the vehicular movement, parking of vehicles and maintaining one way traffic, posting of more traffic Constables with duty consciousness may be sought. At present hardly one traffic Constable is seen at the entrance of the City Civil Court who is least bothered about vehicular traffic. Urgent action is needed. Will the authorities act?

Lahari Foundation An Appeal

Lahari Foundation, Bangalore, seeks donations for augmenting its financial base. This foundation is providing assistance to lawyers for health reasons. The donations you make now will be of immense help to some one who needs it.

— Trustee

The Ultimate Saving Factor

Shri D.B.Thengadi

Shri D.B.Thengadi is well known in trade union circle. He was the founder General Secretary of the Bharatiya Mazdur Sangh which is today the largest trade union in the country. He was also a member of the Rajya Sabha in the late 60s. Shri Thengadi addressed the Fifth All India Conference of Bharatiya Adhivakta Parishad held recently at Jabalpur. In view of the rich legal content of the address the same is serialised in Communique-Editor

On August 15, 1947, truncated Bharat was granted Swaraj. But in the light of the subsequent course of events, one is compelled to agree with the following observation of Sri Nagi Reddy. "Whatever the outward changes in political control, nothing essential has changed either in our social set up or in our economic organisation." The same holds good regarding our legal system also. Alladi Krishnaswamy Ayyar said; "We are not starting a constitution anew after a revolution. The existing administrative structure which has worked so long can not be altogether ignored in the new frame-work". So also the colonial legal system. The colonial laws are carried over and their procedures retained. To cite a single example, see the system of trial. Our traditional system is investigative. It can fully serve the purpose of justice. The British system is accusatory. Lord Denning says: "In the system of trial which we have evolved in this country, the judge sits to hear and determine the issues raised by parties, not to conduct an investigation or examination on behalf of society at large, as happens, we believe, in some foreign countries".

After explaining the current British system, Lord Denning says, "so firmly is all this established in our law that the judge is not allowed in a civil dispute to call a witness who he thinks might throw some light on the facts. He must rest content with the witnesses called by the parties- so also it is for the advocates, each in his turn to examine the witnesses, and not for the judge to take it on himself lest by doing so he appears to favour one side or the other- The judge's part in all this is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure; to see

that the advocates behave themselves seemly and keep to the rules laid down by law, to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of judge and assumes the robe of an advocate- and the change does not become him well".

Every court has to depend on witnesses. It is vital to the administration of justice that they should give their evidence freely and without fear. Under the present situation where there is a nexus between politicians and criminals-when politics itself is being criminalised, is it practicable to get reliable witnesses who would speak out freely and fearlessly in the face of money power and muscle power?

Denning finds the British legal system inadequate in yet another respect. According to him: "There has been no lowering of standards. But there is this difference today. Public men are more vulnerable than they were; and it behoves them, even more than ever, to give no causes for scandal. For, if they do, they have to reckon with a growing hazard which has been disclosed in the evidence I have heard. Scandalous information about well-known people has become a marketable commodity. True or false, actual or invented, it can be sold. The greater the scandal, the higher the price it commands. If supported by photographs or letters, real or imaginary, all the better, often enough, the sellers profess to behave themselves as participants in the discreditable conduct which they seek to exploit. Intermediaries move in ready to assist the sale and ensure the highest prices.

(to be continued)

Don't be Crusader

(from page 1)

The danger here lies not in choosing which way to decide but in choosing to decide at all. This is because, whichever way the decision goes it will be welcomed by a particular group in society which agrees with it. But the group which does not agree will in all likelihood, lose faith in the impartiality of the Judge concerned. That is why more often no Judge in his wisdom enters the political thicket and that is how it should be. Those who enter such controversy invite criticism, he said.

Justice Ahmadi said that there were other ominous consequences of such a tread. The Lok Sabha Speaker had in the last year publicly spoken of a fear psychosis that has come up to grip the bureaucracy. There is a decided reluctance for taking decision arising out of the fear that governmental functionaries would be victimised even for honest error. This is a worrying phenomenon while they try to bring back probity in all walks of public life which has salutary effect it must be ensured that the procedure does not become capable of being abused.

An atmosphere where the honest has nothing to fear must prevail. If the essential services of the Government are not performed on account of the fear that the officials concerned will be hauled up even for honest errors the entire governmental machinery will eventually grind to a numbing halt. Certainly the judiciary cannot play the role of bureaucracy. It can, in fit cases, only issue a mandate to the bureaucracy to do a certain thing within a given time frame but not take upon itself the said function, he maintained.

Supreme Court Bench in South India

(from the last issue)

There is Article 39-A as part of the Directive Principles of State Policy, inserted by 42nd Amendment Act, 1976.

Article 39-A

The State shall secure that the operation of the legal system promotes justice on the basis of equal opportunity and shall in particular provide free legal aid, by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

This is an Article of great importance connected with the administration of justice. It lays emphasis inter alia to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. A citizen in Kerala or Tamilnadu or other neighbouring area is under an excess economic burden. He is under excess Supreme Court when compared to a citizen in Delhi, Uttar Pradesh or the neighboring region. He is denied opportunities for securing justice by reason of economic disabilities. This has to be eliminated.

Forty percent of the population of India are living away from the Supreme Court and they are denied the equal protection of laws guaranteed by our Constitution. There are large number of instances where poor and down trodden in South India are denied their valuable right because of their inability to approach the Apex Court of our country. Distanced justice is equivalent to denied of justice. Justice must be available equally for all the citizens irrespective of their place of birth. So long as the sitting of Supreme Court of India remains in Delhi alone, this fundamental principles cannot be put into practice.

(concluded)

Conveyancing of Flats

Salem V. Subramanyam, Advocate.

The District Registrars of late at the behest of the scheme of 45A of the Karnataka Stamp Act is collecting the stamp duty and registration fee against the super built up area of the buildings, erratically in the guise of arbitrary estimation. Ordinarily, the super built up area is almost twice the actual carpet area/living area. What is conveyed by the builder/promoter of an apartment is the exact carpet area of the flat together with the undivided interest in the land and not otherwise.

Technically, under the provisions of Section 54 of the Transfer of Property Act, the conveying portion in the claim of ownership is the living/habited area and not the super built up area. Though the "DEED OF APARTMENT" recites specifically the actual carpet area of the flat, being the subject matter of apparent conveyance, the authorities collect the duty and the fee on the Super built up area worked out as per their norms. Obviously, the collection of duty on the super built up area against common partition walls in the flat would tantamount to the collection of duty indirectly for the ad-joining flat also resulting in payment of duty twice for the same one. It is not understandable under what laws in force the duty and the fee is chargeable on the super built up area when the floor area is the actual area for utilisation, being factual subject matter of conveyancing?

Ironically, the District Registrars have assumed the adverse jurisdiction in running a parallel Transfer of Property Act and the law of conveyancing to suit their whims and fancies in the absence of requisite statutory regulations. The Commissioner of Stamps and Registration has become an ornamental post and nothing is being done against the errant District Registrars. Sadly

certain District Registrars make an attempt to levy and collect duty and fee at 14% for the flat contrary to the Karnataka Stamp Amendment Act, 1994 which authorise to collect the duty at a lesser rate at $6 + 2 + 2 = 10\%$, for the first time conveyancing by the owner/developer/promoters of the flats.

Therefore, it is the need of the hour to bring a notification from the State Government in so far as to collect the duty and fee only to the extent of carpet area of the flat conveyed in conformity with the deed of apartment vis-a-vis the Amendment of 1994 to prevent rampant injustice.

The District Registrars to not base their estimation on any realistic positive materials nor communicate such basis to the flat owners. The rule of law and natural justice does not play any role in their office. The entire act and exercise of the powers of the District Registrar is contrary to the Law held by the Hon'ble High Court of Karnataka in the case of Pushpavalli VS State of Karnataka reported in ILR 1985 Karnataka page 3733. Even the valuation of the Sub-Registrars is ignored though at times it is scientific and believable, and re-estimate the same irrationally contrary to the ruling of the Supreme Court in Velukuttys case reported in 17 STC 465. The text of the ruling is that the element of guess work must be honest and not wild. The provisional and final orders under the Karnataka Stamp Act Prevention of Undervaluation Rules will have to be rational and reason and cannot be arbitrary. It is not the right direction to prevent the authorities in the malafide exercise of powers under Draconian Laws by the State Government in the larger interest of the public. Will the authorities respond to this echo?

News Focus

- * On 21-1-97 Sri.Siddaramaiah, Deputy Chief Minister of Karnataka, addressed the members of AAB in the City Unit.
- * On 24-1-97 Sri Ramakrishna Hegde, President of the Rastriya Nava Nirmana Vedithe, addressed the members of AAB in City Unit on the subject "Fifty years of Indian Independence- A retrospect."
- * On 26-1-97 fortieth Republic Day was jointly celebrated by the Advocates Association, Bangalore, the Bangalore Advocates Co-operative Society Ltd, and the Bangalore Literary Union at the High Court premises. Justice P.Krishna Moorthy, Judge High Court of Karnataka unfurled the National Flag and addressed the gathering. A group of Advocates sang patriotic and other songs.
- * On 31-1-97 Sri Shivarundra, Mahaswamy of Belimutt addressed the members of AAB, City Unit on the topic "Judiciary and Dharma".
- * On 3-2-97 Mr.Vijay Gore, Chairman KEB, addressed the members of AAB, City Unit on the subject "Demand for Meter Security Deposit".
- * On 13-2-97 Swamy Yateeshanandaji of Vivekananda Ashram Ulsoor, addressed the members of AAB, High Court Unit on the topic "the message of Swamy Vivekananda".
- * On 14-2-97 Justice K.Shivashankar Bhat, Chairman, KAT addressed the members of AAB, High Court Unit on the topic "the Administrative Tribunal Act".

News Panorama

- ◆ Mr.Dubijic, a Swidish national, who has instituted a suit against Sparbanken claiming a monetary compensation of 3.3 million SKR alleging cheating of his savings by the Bank, recently sold off his kidney to pay his Lawyer's fee. According to him state legal aid was denied to him and he has no alternative but to sell his kidney.
- ◆ Noted TV and film personality Jaspal Bhatti has written a letter to the Chief Justice of Mumbai High Court seeking permission to marry for the second time even while his first wife is alive. The noted satirist has stated in his letter that he was inspired to write the letter by the prominent film personalities who are in the habit of marrying for the second time deserting their living spouses.
- ◆ Iran has filed a law suit against US Administration before the International Court of Justice claiming reparations for the destruction of the three of its oil platforms viz. Reshadat on oct.19,1987 and Nasr and Salman on April 18, 1988 in violation of International Laws. This suit filed on Nov.2,1992 is now coming up for Review before the ICJ regarding the nature of Iran's claim.
- ◆ On 5-2-97 a Civil Court in Santa Monica, California, has awarded 8.5 million dollars to the relatives of deceased by holding the former US Foot Ball hero responsible for the murder of his ex-wife and her friend. The damages are awarded 16 months after the sports superstar was acquitted in a criminal trial which was nationally televised.

Humour in Courts

- Magistrate - "who is appearing for you ?"
- Accused - "I am appearing for myself."
- Magistrate - "Are you pleading guilty or not ?"
- Accused - "I am innocent, your Honour. If I was guilty, I would have chosen a Lawyer."

K.R.Dinakar, Advocate.

Literary Union

- On 28.1.1997 a book titled "Jeevanchaitra and other poems"(in Kannada) written by Sri.G.Lingappa, Advocate was released. Justice.S.Rajendra Babu presided over the function in which Sri K.N.Subba Reddy, President of AAB was the Chief Guest.
- On 4.2.1997 Dr.H.L.Nage Gowda, noted poet and MLC delivered a speech on the renaissance of folklore arts. Sri C.H.Hanumantharaya, President BLU, presided over the function. The function was concluded with a light musical programme rendered by Smt.Manjula Mohan and her companions.
- On 8-2-97 on excursion was organised to Talakadu, Somanathapura, Ranagana Thittu, Srirangapattana and Nimishamba Temple, Fifty persons had gone on this excursion.

Lahari Foundation

In response to the Foundations Appeal the following donation has been received :

Mr.Bharathkmar Mehta
Rs.2,500/-.

Foreign Tours

- ➔ Mr.J.Salim Sharief, Advocate undertook a religious tour,Umra to Saudi Arabia between 23.1.97 to 15.2.97.

Obituary

- ✦ On 29.1.97 G.J.Nagaraja Rao (70), Advocate, passed away at Bangalore.
- ✦ On 7.2.97 B.Shankarappa (65), Advocate, passed away at Bangalore.
- ✦ On 10.2.97 H.M. Lakshminarayana (68), Advocate, passed away at Bangalore.

State Forum Gets New Chairman

On 11-2-97 Justice B.Jagannatha Hegde, a former Judge of the High Court of Karnataka State, took over as the Chairman of the Karnataka State Consumers' Reddressal Forum. Justice Hegde succeeds Justice D.R.Vittal Rao who retired recently.

Lahari Advocates Forum

- On 24.1.97 Justice R.V.Raveendran delivered a lecture on the "Law of Arbitration".
- On 24.1.97 Lahari Advocates Forum felicitated Mr.C.N. Ramaswamy Sastry on the occasion of the Diamond Jubilee Year of his professional career.
- On 11.2.97 Mr.L.S. Venkatakrishna, Advocate, delivered a Lecture "My impressions of Europe and America".
- On 14.2.97 Mr.P.D.Surana delivered a lecture on "the Law of Execution".

Campus Watch

- ☆ On 24.1.97 Sri B. Somashekar, Minister for Higher Education in Karnataka, inaugurated the Model Parliament Session conducted by the University Law College. Dr.M.S.Thimmappa, Registrar, Bangalore University, Presided.
- ☆ Justice P.Vishwanatha Shetty was the Chief Guest in the recently held College Day Celebrations of Sri. Dharmasthala Manjunatheswara, Kodilbail, Mangalore.
- ☆ On 30.1.1997 Justice N.Venkatachala, Retired Judge, Supreme Court of India, inaugurated the All India Moot Court Competition in Bangalore, organised by the University Law College, Bangalore. Justice G.P.Shivaprakash, Judge, High Court of Karnataka, was the Chief Guest at the valedictory function held on 1.2.97 at the College premises. The team from Government Law College, Ernakulam, secured First Prize and the Kerala Law Academy, Thiruvanthapuram secured Second Prize in the competition.
- ☆ On 6.2.97 Sri.B. Basavanappa, Karnataka Minister for Food and Civil Supplies, addressed the members of AAB, City Unit on the subject "Price rise and Consumer Protection".

* Read *

*Communique for
Latest News*